

**EMPLOYER STATUS DETERMINATION -- RECONSIDERATION**  
**Rail Management and Consulting Corporation**

This is the determination of the Railroad Retirement Board concerning the request of Rail Management and Consulting Corporation (RMCC) for prospective coverage under the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA).

**BACKGROUND**

In Legal Opinion L-91-102, issued on July 29, 1991, RMCC was held to have been an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and the RUIA from the date of its incorporation and commencement of operations on January 26, 1982. In a letter dated November 8, 1991, RMCC's attorney stated that RMCC intended to appeal the initial employer status determination.

In a letter dated July 15, 1992, RMCC requested reconsideration and also requested a temporary postponement of reconsideration until a decision was issued by the United States Court of Appeals for the Seventh Circuit in the case of Livingston Rebuild Center, Inc. v. Railroad Retirement Board. In a letter dated August 17, 1992, the Secretary to the Board notified RMCC that the Board would grant RMCC's request to defer reconsideration.

Subsequent to the decision in Livingston Rebuild Center, Inc. v. Railroad Retirement Board, 970 F.2d 295 (7th Cir. 1992), RMCC filed reports of creditable compensation for the period 1982 through 1991 and indicated that it would file reports for 1992 on or before the due dates. RMCC requested, however, that the employer status determination be applied prospectively for purposes of the RUIA.

**DISCUSSION**

The attorney for RMCC has advised the Board that during the period 1982 through 1991, RMCC paid all applicable Federal and State unemployment taxes. He also stated that it is his understanding that any unemployment claims made by RMCC employees during that period would have been filed with the appropriate State agency and that the RRB did not pay any unemployment benefits to any RMCC employees for that period. Board records verify this latter statement.

Based upon the information provided by RMCC, the Board finds that it would be appropriate to hold RMCC to be a covered employer under the RUIA prospectively from July 1, 1991, the first day of the calendar quarter in which RMCC was notified that it is a covered employer under the RUIA. No benefits were paid based on employment

with RMCC for the period prior to that date, and RMCC paid taxes into the appropriate State unemployment system for that period. Finally, there is no evidence that RMCC did not believe in good

Rail Management and Consulting Corporation

faith that it was subject to the Federal/State unemployment compensation system rather than the RUIA.

Based on the foregoing, the decision of the Board's Deputy General Counsel in Legal Opinion L-91-102 is modified to change the effective date of coverage under the RUIA to July 1, 1991.

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Glen L. Bower

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V. M. Speakman, Jr.

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Jerome F. Kever

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**TO:** The Board

**FROM:** General Counsel

**SUBJECT:** Employer Status Determination -- Reconsideration  
Waiver of Contributions  
Rail Management and Consulting Corporation

Attached is a proposed Board decision regarding the request of Rail Management and Consulting Corporation (RMCC), for reconsideration of the decision of the Deputy General Counsel in Legal Opinion L-91-102, that RMCC has been an employer under the Railroad Unemployment Insurance Act since January 26, 1982, the date that it was incorporated and began operations.

RMCC has filed reports of creditable compensation retroactive to 1982 through 1991, but has requested the employer status determination be applied prospectively for purposes of the RUIA. The attorney for RMCC has advised the Board that during the period from 1982 through 1991, RMCC paid all applicable Federal and State unemployment taxes. He also stated that it is his understanding that any unemployment claims made by RMCC employees during that period would have been filed with the appropriate State agency and that the Railroad Retirement Board did not pay any unemployment benefits to any RMCC employees for that period. We have verified with the Bureau of Unemployment and Sickness Insurance that no benefits were paid prior to 1992.

The Board has the authority under section 8(k) of the RUIA (45 U.S.C. §358(k)) to decide not to give retroactive effect to the coverage ruling with respect to the RUIA. Numerous decisions to apply coverage rulings under the RUIA without retroactive effect have been made by the Board over the years. See, e.g., Board Order 90-149 (Cape Cod and Hyannis Railroad), Board Order 85-53 (Nicolet Badger Northern Railroad), Board Order 85-52 (Railroad Concrete Crosstie), Board Order 78-83 (RSTX, Inc.), Board Order 78-30 (Kansas City Southern Railway with respect to Trans-Mark Services, Inc. and Servitron, Inc.), Board Order 78-17 (Lower Lake Dock Co.), Board Order 67-33 (REA Leasing Corp.), Board Order 59-119 (Richmond Union Stock Yards), Board 58-146 (Outer Harbor Terminal Railway Co.), and Board Order 53-54 (Pacific Coast Railroad Co.).

Rulings on non-retroactive coverage under the RUIA have been granted by the Board in cases where: 1) the evidence suggests that the employer paid taxes under the Federal/State unemployment

compensation system believing in good faith that he was covered by that system; 2) no benefits have been paid to the employer's employees under the RUIA; and 3) where retroactive coverage would impose undue burden on the Board, the employer, and/or the state

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The Board

system for no apparent gain.

There is nothing in the bureau of law file concerning RMCC that suggests that its management did not believe in good faith that it was properly paying contributions under the Federal/State system prior to the coverage ruling in Legal Opinion L-91-102. Moreover, no benefits have been paid under the RUIA prior to January 1, 1992. Finally, a non-retroactive ruling under the RUIA would certainly appear appropriate to avoid the burden and costs associated with the change in coverage.

The attached recommended decision would apply coverage under the RUIA prospectively from July 1, 1991, the first day of the calendar quarter in which RMCC was notified as to the ruling concerning its status as a covered employer.

Catherine C. Cook

Attachment

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